

## **ARTICLE 22**

### **DISCIPLINE AND ADVERSE ACTIONS**

#### **1. General:**

- a. The Union and Management agree that the objectives of disciplinary measures are to correct employee behavior and to prevent the recurrence of misconduct.
- b. Management and the Union agree that it is important that the supervisor/employee relationship encourage early recognition and resolution of potential conduct situations that could lead to disciplinary or adverse action.
- c. When Management becomes aware of misconduct by an employee, the employee will be contacted as soon as practicable and instructed to discontinue the misconduct. Management will not knowingly allow instances of misconduct to continue for the purpose of increasing the severity of a potential penalty.
- d. When disciplinary action is initiated, it will be within a reasonable time period after the incident in question, or after Management knew or reasonably should have known of the incident.

#### **2. Cautionary Situations:**

Letters of warning (any letter that addresses a performance or conduct problem with the exception of Letters of Reprimand) will state the specific reasons that gave rise to the letter and will include the employee's grievance rights. A letter of warning can be retained by the initiating supervisor in a confidential nonpermanent file and/or in the Human Resources Staff. Letters of warning will remain in effect for a period not to exceed 1 year and may be withdrawn earlier at the election of the supervisor. The original shall be given to the employee to whom it is directed.

#### **3. Alternative Discipline:**

- a. In accordance with the provisions of Chapter 751, Subchapter 4, of the Department Personnel Manual, the Forest Service encourages the use of alternative discipline whenever appropriate. Alternative discipline provides an

opportunity to better manage caseloads, reduce administrative costs, and rehabilitate employees for productive Government service.

- b. Alternative discipline agreements will promote the efficiency of the service and may contain nontraditional penalties such as community service, donation of annual leave to the leave transfer program, use of leave-without-pay instead of suspensions, or combinations of these or other agreed-to alternatives.
- c. The option to enter into an alternative discipline agreement is voluntary on the part of the employee. When offered an alternative discipline agreement, the employee will be informed in writing that they may discuss the alternative discipline agreement with a Union representative before signing.
- d. In cases where the appropriate penalty is removal, alternative discipline may not be used. However, a proposed removal that is mitigated at the decision stage may be a candidate for alternative discipline.

#### **4. Traditional Discipline:**

- a. Discipline is defined for the purposes of this article as any action taken against an employee that results in a letter of reprimand, suspension without pay, reduction-in-pay or -grade, or removal from the Forest Service, except for performance actions taken under Article 21 of this Master Agreement.
- b. Disciplinary actions against employees must be based on just cause, consistent with applicable laws and regulations, and fair and equitable.
- c. Before deciding on a particular penalty, agency officials should consider all the pertinent factors as described in USDA Department Personnel Manual 751, Appendix A, May 1994.

#### **5. Inquiries and Administrative Investigations:**

- a. Prior to issuing a letter of reprimand or a notice of proposed disciplinary action, the official issuing the letter or notice, or his or her designee, shall undertake an inquiry to obtain pertinent facts relating to the disciplinary situation. The “inquiry” is the initial phase of an investigation to determine whether further investigation or discipline is warranted.

- b. To the extent practicable, the official conducting the inquiry will try to obtain information directly from the affected employee, before contacting others. Investigations, if warranted, will be in accordance with the standards set forth in USDA Department Manual Chapter 751, Subchapter 3.
- c. The affected employee(s) or Union may request information about the status of an inquiry or administrative investigation at any time, but not the substance. Management will promptly respond to these requests. The response will specify whether the inquiry or investigation has been closed or when closure is expected, if known.
- d. The employee may, in accordance with Article 4.3, be represented by the Union. Employees of the unit are entitled to Union representation at all discussions and upon request must be given an opportunity to secure a representative. If involved in a discussion with Management or an agency investigator, the employee may terminate the discussion and be allowed adequate time to secure a representative.
- e. Once Management has been notified that the Union is representing the employee(s) in reference to a specific matter, Management will notify the representative of any additional meetings with the employee(s) relevant to that matter. This notification will allow reasonable time for the representative to attend the meeting(s). A copy of any correspondence to the employee from Management will be sent to the Union representative at the same time as it is sent to the employee.
- f. Criminal investigations: The provisions of this article do not apply to criminal investigations.

## **6. Procedures:**

- a. Decision Letters for disciplinary actions as defined in Section 4.a. will inform the employee that records of all disciplinary actions will be retained in the agency's official disciplinary case file in accordance with the Records Management Handbook (FSH 6209.11 Chapter 40). Employees will be afforded access to any closed disciplinary files pertaining to the employee.

b. Letter(s) of Reprimand:

(1) Letter(s) of reprimand will be clearly titled and sufficiently specific to support the letter being issued and what the employee can do to improve or take needed corrective action. The employee will be advised of his or her grievance rights. The letter will advise the employee that the reprimand will be retained in the Official Personnel Folder (OPF) for a period of 1 year. At the time it is removed from the OPF, it will be returned to the employee in a confidential manner.

c. Provisions common to all disciplinary cases taken under Title 5 Code of Federal Regulations, Part 752 (5 CFR 752):

(1) In the event an employee is issued a notice of proposed disciplinary action, that employee must be afforded and made aware of all the rights and privileges due him or her under 5 CFR 752 and this Master Agreement. Upon request, management will provide copies to the employee of the evidence collected by management to support the proposed disciplinary action.

(2) The employee and/or representative will be granted a reasonable amount of official time to prepare an answer to any proposal. Arrangements for use of such time will be made in accordance with the provisions of Articles 4 and 5.

(3) Time limits for the employee's response may be extended upon written request.

d. Suspension of 14 days or less: In addition to Section 6.c. above, the following applies to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less. Such an employee is entitled to:

(1) At least 7 days advanced written notice stating the specific reasons for the proposed suspension.

(2) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(3) Representation by a National Federation of Federal Employees (NFFE) representative, an attorney, or another representative.

Note: The employee will notify management, in writing, of who their representative is and any changes that may occur. If there are mitigating circumstances where written designation cannot be made prior to a representational need, verbal designation by the employee will be sufficient and the designation will be documented as soon as practicable.

(4) A written decision and the specific reasons, therefore, at the earliest practicable date.

(5) The opportunity to grieve the decision, if adverse, through the negotiated grievance procedure contained in Article 9. The written decision shall advise the employee of this right. If the employee chooses to use the negotiated grievance procedure, he or she must represent himself or herself or be represented by the Union.

e. Removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction-in-pay or -grade: In addition to Section 6.c. above, the following applies to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions. Such an employee is entitled to:

(1) At least 30 days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action.

- (2) A reasonable time, never less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.
- (3) NFFE representative or an attorney or another representative.

Note: The employee will notify management, in writing, of who their representative is and any changes that may occur. If there are mitigating circumstances where written designation cannot be made prior to a representational need, verbal designation by the employee will be sufficient and the designation will be documented as soon as practicable.

- (4) A written decision and the specific reasons, therefore, at the earliest practicable date.
- (5) The decision letter informing the employee of his or her option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both, and informing the employee that he or she will be deemed to have exercised his or her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure. If the employee chooses to use the negotiated grievance procedure, he or she must represent himself or herself or be represented by the Union.

## **7. Action by the Deciding Official:**

- a. After carefully considering the evidence and the employee's response, if any, including any mitigating factors, the deciding official shall decide:
  - (1) To withdraw the proposed action.
  - (2) To institute a lesser action.
  - (3) To institute the proposed action.

## **8. Stay of Action:** The effective date of suspension actions will be stayed 10 days from the date of the decision letter, except when an indefinite suspension is warranted, in which case immediate suspension may be appropriate.

**9. Termination of Probationary/Trial Employees:**

- a. The Parties recognize that the probationary/trial period is an extension of the examining process.
- b. Terminations of probationary/trial employees for conduct or performance reasons will take place only when reasonable doubt exists as to the appropriateness of continued employment. Employees will have an opportunity to demonstrate their performance and conduct for continued employment to the fullest extent possible during their probationary period. If a decision is made to terminate an employee during the probationary period, a written notice will be issued to the employee containing the reasons for the action and its effective date. The reasons will include any agency conclusions on performance and/or conduct deficiencies.
- c. Discipline of probationary/trial employees will follow the same procedure, above, except the employee will be advised in writing of his or her right to grieve the decision, according to Article 9.

**10. Termination and Discipline of Temporary Employees:** Refer to Article 24.